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SALIWANCHIK LLOYD &
SALIWANCHIK
A PROFESSIONAL ASSOCIATION
PO Box 142950
GAINESVILLE FL 32614

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SEP 02 2009

OFFICE OF PETITIONS

In re Application of :
Mohapatra et al. :
Application No. 10/655,873 : LETTER REGARDING
Filed: September 5, 2003 : PATENT TERM ADJUSTMENT
Atty Docket No. USF.182XC1 :
:

This is a decision on the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT" filed March 20, 2009. Applicants agree with the initial determination of patent term adjustment under 35 U.S.C. 154(b) of zero (0) days. Pursuant to their duty of good faith and candor, applicants disclose that the entry of a period of adjustment for Office delay should be 25 days, not 118 days.

The request for review of patent term adjustment is **GRANTED to the extent indicated herein.**

The Office has updated the PALM screen to reflect that the Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is zero (0) days, including 371 days of applicant delay and 30 days of Office delay. A copy of the updated PALM screen, showing this determination, is enclosed.

On February 9, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. On March 20, 2009, applicants timely submitted the instant comment.

The record supports a conclusion that the present application is not subject to a terminal disclaimer.

Applicants are correct that the period of adjustment of 118 days for Office delay is incorrect. Pursuant to 37 C.F.R. § 1.702(a),

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

... (2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

On November 28, 2007, the Office mailed the Letter Regarding Deferral/Suspension of action under 37 CFR 1.103 in response to, and within four months of, applicants' filing of a reply including a request for continued examination (RCE), amendment after final and request for suspension on October 31, 2007. Thus, there was no examination delay within the meaning of § 1.702(a)(2). Accordingly, the period of adjustment of 118 days for Office delay in responding to the reply filed October 31, 2007 has been corrected to 0 days.

However, applicants are incorrect in their assertion of entitlement to 25 additional days for Office delay in not taking action within four months of the end of the suspension on January 31, 2008. As discussed above, and acknowledged by applicants, whether the Office failed to take action within the meaning of 1.702(a)(2) by delaying in responding to the reply under 35 U.S.C. 132 filed October 31, 2007 is properly calculated based on the Office action, namely the Letter Regarding Suspension, mailed November 28, 2007. 37 CFR 1.702(a)(2) does not provide for entering a further Office delay for taking action in response to the reply under 35 U.S.C. 132 filed October 31, 2007 after the end of the applicant requested suspension. Applicants do not cite any rule or statute that provides for entry of an additional 25 days based on failure to take action after the end of an applicant requested suspension.

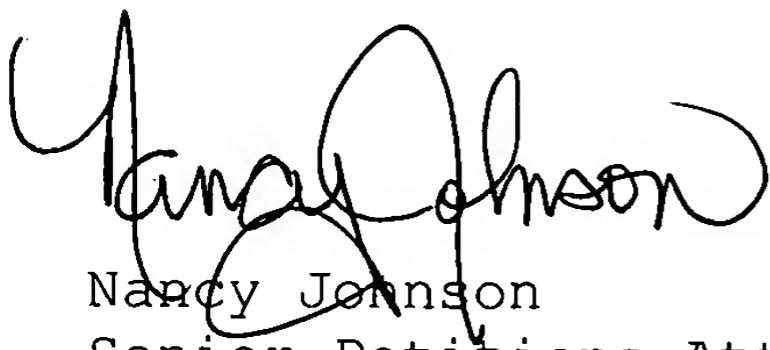
In view thereof, the determination of patent term adjustment at the time of the mailing of the Notice of Allowance remains zero (0) days.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosed: Copy of REVISED PALM Screen

PALM INTRANET

Day : Monday
Date: 8/31/2009

Time: 20:48:52

PTA Calculations for Application: 10/655873

Application Filing Date:	09/05/2003	PTO Delay (PTO):	148
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	371
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-118		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
120	08/31/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		118	
112	02/09/2009	MAIL NOTICE OF ALLOWANCE			
111	02/05/2009	ISSUE REVISION COMPLETED			
110	02/05/2009	DOCUMENT VERIFICATION			
109	02/05/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
108	02/05/2009	NOTICE OF ALLOWABILITY			
104	10/27/2008	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
103	11/26/2008	DATE FORWARDED TO EXAMINER			
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97	06/08/2008	DATE FORWARDED TO EXAMINER			
96	06/08/2008	TO CLOSE THE A/R RECORD AND RESET THE STATUS FOR EXPIRED SUSPENSIONS.			
95	11/28/2007	MAIL LETTER SUSPENDING PROSECUTION AT APPLICANT'S REQUEST			
94	11/27/2007	LETTER OF SUSPENSION - APPLICANT INITIATED			
93	10/31/2007	LETTER REQUESTING SUSPENSION OF PROSECUTION			
92	11/27/2007	DATE FORWARDED TO EXAMINER			
91	10/31/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
90	11/27/2007	DATE FORWARDED TO EXAMINER			

89	10/31/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
88	11/27/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
87	10/31/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
86	09/20/2007	MAIL FINAL REJECTION (PTOL - 326)			
85	09/17/2007	FINAL REJECTION			
84	06/26/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
83	02/23/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
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81	07/09/2007	DATE FORWARDED TO EXAMINER			
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78	06/30/2007	DATE FORWARDED TO EXAMINER			
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73	06/26/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
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70	02/26/2007	MAIL NON-FINAL REJECTION			
69	02/05/2007	NON-FINAL REJECTION			
68	11/13/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
67	11/28/2006	CASE DOCKETED TO EXAMINER IN GAU			
66.7	11/13/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
66	11/13/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

65	11/20/2006	DATE FORWARDED TO EXAMINER			
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54	04/20/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
53	05/05/2006	REFERENCE CAPTURE ON IDS			
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45	04/26/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
44	04/20/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
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39	12/15/2005	MAIL FINAL REJECTION (PTOL - 326)	30	33	
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31	01/13/2005	MAIL NON-FINAL REJECTION		
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29	12/02/2004	DATE FORWARDED TO EXAMINER		
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26	10/21/2004	MAIL RESTRICTION REQUIREMENT		
25	10/15/2004	CORRESPONDENCE ADDRESS CHANGE		
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23	06/10/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE		
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19.7	02/17/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
19	02/17/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
18	03/31/2004	APPLICATION RETURN FROM OIPE		
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8	09/05/2003	PGPUBS NONPUB REQUEST		
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5	11/19/2003	CLEARED BY OIPE CSR		
4	10/11/2003	IFW SCAN & PACR AUTO SECURITY REVIEW		

3	09/17/2003	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
2	09/05/2003	CRF DISK HAS BEEN RECEIVED BY PREEEXAM / GROUP / PCT			
1	09/05/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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